IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Cr. A. No. 596-DB of 2001
Date of decision : 28-01-2011

Mohan Singh and another … Appellants

Versus.

State of Punjab … Respondent

CORAM:- HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE ARVIND KUMAR

Present: Mr. K.S.Sidhu, Sr. Advocate,
with Mr. Gurtej Singh Benipal, Advocate,
for the appellants in Criminal Appeal No. 464-DB of 2001

Mr. A.K.Walia, Advocate,
for the appellants in Criminal Appeals No. 1071-SB of 2001
and 596-DB of 2001

Mr. D.S.Brar, DAG Punjab

…

ARVIND KUMAR, J:

This shall dispose of three criminal appeals, i.e. Crl. A. Nos. 596-DB of 2001 preferred by accused-appellants, namely, Mohan Singh and Bhupinder Singh, Criminal Appeal No. 464-DB of 2001 preferred by accused-appellants, namely, Pargat Singh and Joginder Singh while Criminal Appeal No. 1071-SB of 2001 has been filed by accused Joginder Singh for setting aside the order confiscating his truck bearing registration No. DIG-8389.

The two appeals, namely, Criminal Appeals No. 596-DB of 2001 and 464-DB of 2001 are directed against judgment and order dated 9.8.2001 passed by the Judge, Special Court, Patiala, whereby in case FIR No. 22 dated 25.2.1997 registered under Section 15 of the Narcotic Drugs

and Psychotropic Substances Act,1985 (in short the Act) at Police Station Patran, the appellants-accused have been convicted under Section 15 of the Act ibid and sentenced to undergo rigorous imprisonment for 11 years each and to pay a fine of Rs. 1 lac each and in default of payment of fine, to further undergo RI for six months each. As regards the third appeal, namely, Criminal Appeal No. 1071-SB of 2001, has been filed by accused Joginder Singh for setting aside that part of the judgment dated 9.8.2001 whereby his truck bearing registration No. DIG-8389 has been ordered to be confiscated.

In brief, the case of the prosecution is that on the night intervening 24/25.2.1997, a police party consisting of Sub Inspector Mohinder Singh and other police officials, under the supervision of DSP Gajjan Singh, was present on the Patran-Shatrana bridge of Bhakra canal in the area of village Shatrana, in connection with night domination. At about 1 A.M, a truck was noticed by them coming from the Patran side. It was signalled to stop but its driver instead of stopping it, drove the same at a fast speed towards village Shatrana after crossing the bridge. At last, the police party succeeded in stopping the truck. After the driver of the truck got down from the truck, the police searched the truck and on its back side, some bags were found loaded on which three persons were sitting; out of whom, two persons taking the advantage of darkness, succeeded in making good their escape and only the third person could be apprehended while sitting on the truck. On asking, he disclosed his name as Bhupinder Singh while the driver disclosed his name as Mohan Singh. On investigation, Bhupinder Singh disclosed the names of two persons who ran away, as Pargat Singh and Joginder Singh. In the meantime, DSP Gajjan Singh also arrived at the spot. After disclosing his identity to the accused, he asked the accused whether they wanted their search to be conducted in the presence of other gazetted officer or a Magistrate but the accused reposed faith in him and therefore, under his supervision, the truck was searched by SI Mohinder Singh upon which, 23 bags of poppy husk were recovered. From each bag, two samples of 250 grams of poppy husk was taken out while the remaining poppy husk in each bag, on weighment, was found to be containing 34 kgs 500 grams. Thereafter, all the 46 samples and the 23 bags were sealed by the DSP with his seal ‘GS’. Thereafter, the present case came to be registered against the

accused. Later, accused Pargat Singh was arrested on 30.3.1997 while accused Joginder Singh was arrested on 6.10.1997. On completion of investigation and certain formalities, the accused were challaned under Section 15 of the Act whereafter charge under the said section was framed by the trial Court to which they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined PW-1 ASI Tarsem Lal, PW-2 MHC Swaranjit Singh, PW-3 Constable Ram Dia, PW-4 Constable Jaspal Singh, PW-5 DSP Gajjan Singh and PW-6 SI Mohinder Singh and after tendering into evidence the report, Exhibit PM, of the Forensic Science Laboratory, closed its evidence.

Thereafter, the statement of the accused under Section 313 Cr.P.C. was recorded by putting them incriminating evidence qua them to which they pleaded innocence and false implication. Accused Mohan Singh took up the plea that he was arrested by the police 4/5 days prior to the alleged recovery and that the truck did not belong to him and while he was in custody of the police, the present case has been registered against him falsely. Accused Bhupinder Singh took up a plea almost similar to the one taken by accused Mohan Singh. Accused Joginder Singh and Pargat Singh took up the plea that they had been falsely implicated in the case due to party faction in the village and on suspicion basis. However, they did not lead evidence in defence and closed the same.

The learned Judge, Special Court, Patiala, upon appreciation of evidence adduced on record, vide the impugned judgment and order held the accused-appellants guilty and convicted and sentenced them in the manner indicated above. Hence, the present appeals.

We have heard learned counsel for the parties.

Counsel for the appellants has alleged contravention of Section 50 of the Act ibid. The provisions of Section 50 of the Act are to be invoked when recovery is to be effected from the personal search of the accused. Further, in the instant case, recovery has been made from the vehicle and not from personal search of the accused and as such, the provisions of Section 50 are not attracted. However, the argument of the learned counsel for the appellants is that the accused-appellants were also personally searched and in that situation, it was obligatory upon the investigating Agency to observe the provisions of Section 50 ibid.

Reference has been made to a judgment of the Hon'ble Supreme Court in **Dilip and another v. State of M.P. 2007(1) RCR(Criminal) 586(SC).** There is no dispute to the proposition of law that before search of the contraband from the vehicle, if the personal search of the appellants had been carried out, in that situation Section 50 gets attracted. However, the said position does not exist in the present case. In the instant case, it is evident from the statement of PW-6 that first search and seizure was effected and subsequently after effecting recovery and preparation of documents, i.e. rough site plan etc., the personal search of the accused-appellants was conducted. This personal search was in the way of Jamatalashi. In the present case, it is not the case that before search and seizure, personal search was conducted to attract Section 50 of the Act and as such, the judgment in Dilip's case(supra) has no application to the circumstances of the present case. Thus, since the personal search was conducted after search and seizure, Section 50 does not get attracted.

Counsel for the appellants has argued that no independent witness had been joined at the time of search and seizure despite the fact that it has been admitted by PW-5 DSP Gajjan Singh that some pedestrians were passing from there at that time. The contention is meritless. There is no dispute that the recovery was not made in the presence of an independent witness and thus, no such witness could be examined but to our mind, non-examination of an independent witness cannot be taken as a ground to discard the case of the prosecution in its entirety if it is otherwise proved. In these circumstances, it could not be said that the conduct of the Investigating Officer was blame-worthy. In **Appa Bai and another v. State of Gujarat AIR 1988 SC 696**, it was held by the Hon’ble Supreme Court that the civilized people are generally insensitive when a crime is committed, even in their presence, and they withdraw from the victim’s side, and from the side of the vigilant. They keep themselves away from the Courts, unless it is inevitable. Moreover, they think the crime like a dispute between two individuals, and do not involve themselves in it. In **Akmal Ahmed v. State of Delhi 1999(2) RCR(Criminal) 265 (SC)**, it was held that it is now well settled that the evidence of search and seizure made by the police will not become vitiated solely for the reason that the same was not supported by an independent witness. In **State Govt. of NCT Delhi v.**

Sunil 2001(1) RCR(Criminal) 56, it was held by the Hon'ble Supreme Court as under:-

> " It is an archaic notion that actions of the Police officer, should be approached with initial distrust. It is time now to start placing at least initial trust on the actions and the documents made by the Police. At any rate, the Court cannot start with the presumption that the police records are untrustworthy. As a proposition of law, the presumption should be the other way round. The official acts of the Police have been regularly performed is a wise principle of presumption and recognized even by the Legislature."

It has been held by the Hon'ble Supreme Court in **Balbir Kaur v. State of Punjab, 2009(3) RCR(Criminal) 580(SC)** that in absence of an independent witness, it cannot be said that the search and recovery are in any manner vitiated. In **State of Punjab v. Surjit Kaur and another, 2009 (3) RCR(Criminal) 117(SC)**, the Hon'ble Supreme Court has held that the High Court had fallen in error in holding that the prosecution version become vulnerable due to non-examination of any person who is not an official witness. Therefore, there is no principle of law that without corroboration by an independent witness, testimony of official witness(es) cannot be relied upon. The testimony of the official witnesses should be treated in the same manner as the testimony of any other witness. The presumption that a person acts honestly applies as much in favour of a police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good grounds. The Court at the most is required to scan the official witness with more care and caution. The present case mainly rests upon the statements of PW-5 DSP Gajjan Singh and PW-6 SI Mohinder Singh. Said DSP Gajjan Singh was present throughout the entire proceedings in relation to search and seizure. The statements of both the witnesses are consistent on material particulars. Thus, the statements of the official witnesses which includes a gazetted officer, being not suffering from any infirmity cannot be discarded simply on the ground that the independent witness was not associated.

Counsel for the appellants has further contended that there is a

delay of 10 days in sending the sample to the Laboratory and no explanation by the prosecution for such delay caused in this respect is forthcoming. This contention is also meritless. This would not dent the case of the prosecution at all. The delay is very common and the accused has to show prejudice cause to him in this regard, whichn is missing. The Hon'ble Supreme Court in **State of Orissa v. Kanduri Sahoo, (2004) 1 Supreme Court Cases 337**, has held that mere delay in sending the sample to the Laboratory is not fatal where there is evidence that the seized articles were kept in proper and safe custody. The report of the Asstt. Chemical Examiner, Exhibit PM, as discussed above, does not suggest that the samples were not intact. The appellants never challenged the report of the Chemical Examiner nor any application was moved for examination of the Chemical Examiner as a witness. In similar situation, in **Ashok Kumar v. State of Haryana, (2000) 2 Supreme Court Cases 592**, wherein faint seals on the packets were produced in Court and in absence of any challenge to the report of the Chemical Analyst and not summoning him as a witness, it was held that the doubts raised by the accused as to whether samples were the same as examined by the Chemical Examiner, were found not sustainable. In **Hardip Singh v. State of Punjab, 2008(4) RCR(Criminal) 97**, samples of opium were sent to the Chemical Examiner after 40 days and the seals were intact and it was held that the delay of 40 days in sending the sample to the Laboratory did not and could not have caused any prejudice to the appellant. In this regard, reference can also be made to judgment rendered by the Hon'ble Supreme Court in **Balbir Kaur v. State of Punjab 2009(3) RCR (Criminal) 580(SC)**.

Counsel for the appellants has also argued that the documents which are prepared at the spot contain the FIR number, which shows that the search and seizure had not been effected as projected by the prosecution. This contention is also meritless. The trial Court has dealt with this contention in para 18 of its judgment while observing that the FIR number was written after the receipt of the FIR on all the documents and there is nothing on record to prove that the FIR number was mentioned at the time of preparation of the documents. A close look to the memos prepared , i.e. recovery memo, arrest memo, recovery memo of truck, rough site plan etc. indicates that these memos were prepared prior to the registration of the FIR

as the place where FIR number is to be mentioned, was kept blank and subsequently, FIR No. 22 has been duly added, i.e. after the registration of the case.

In the back-drop of these facts, the participation of accused, Mohan Singh and Bhupinder Singh, appellants in Criminal Appeal No. 596-DB of 2001, stands proved and as such, they have rightly been convicted and sentenced by the trial Court.

However, as regards, accused Pargat Singh and Joginder Singh, appellants in Criminal Appeal No. 464-DB of 2001, their participation in the offence looks to be suspicious, for variety of reasons. Firstly, their identity has not been proved since admittedly no test identification parade was held. There had been no disclosure statement of Bhupinder Singh with regard to identity of Pargat Singh and Joginder Singh and even if it had been, it would have been inadmissible. PW-6 SI Mohinder Singh has also admitted that he could not lay his hands at any document from which the particulars of the accused Pargat Singh and Joginder Singh could be known. PW-3 Constable Ram Dia has identified both Pargat Singh and Joginder Singh. There are no special reasons for him to have known both these appellants. He admits in his cross-examination that he is neither related to these two accused nor studied nor has any common business with them nor had he appeared as a witness against them in any other case. Secondly, had Constable Ram Dia known both Pargat Singh and Joginder Singh, then when PW-5 DSP Gajjan Singh had arrived at the spot, he would have also come to know about the two arrested persons on the basis of information of constable Ram Dia but he (DSP Gajjan Singh) has stated that at that time it did not come to his knowledge that who were the accused and the whereabout of the accused who had escaped and even later on, he also did not come to know the names of the accused who had escaped. This indicates that PW-3 constable Ram Dia never proclaimed to have known accused Pargat Singh and Joginder Singh, otherwise as discussed above, it would have certainly come to the knowledge of PW-5 DSP Gajjan Singh. In view of this, the identity of both Pargat Singh and Joginder Singh is not established and therefore, they deserve acquittal.

Consequently, Criminal appeal No. 596-DB of 2001 qua appellants Mohan Singh and Bhupinder Singh is dismissed.

As regards Criminal Appeal No. 464-DB of 2001 qua appellants Pargat Singh and Joginder Singh respectively, the same is hereby allowed and they stand acquitted of the charges. They be set at liberty forthwith if not required in any other case. Their bail bonds shall also stand discharged.

As regards Criminal Appeal No. 1071-SB of 2001 preferred by accused-appellant Joginder Singh, the same stands disposed of with the observation that the appellant, if so advised, may seek his remedy as permissible under the law.

(HEMANT GUPTA
JUDGE

(ARVIND KUMAR)
JUDGE

January 28, 2011
JS